

**In the Matter of:**

**Jonathan R., et al.,**

**vs**

**JIM JUSTICE, et al.**

**APRIL ROBERTSON**

*November 21, 2023*



5010 Dempsey Drive  
Cross Lanes WV 25313  
304-415-1122

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON

JONATHAN R., et al.,

Plaintiffs,

-vs- Case No. 3:19-cv-00710

JIM JUSTICE, in his official capacity as  
Governor of West Virginia, et al.,

Defendants.

DEPOSITION OF APRIL ROBERTSON

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The deposition of April Robertson was  
taken on November 21, 2023, at 9:00 a.m.,  
at 2116 Kanawha Boulevard, East, Charleston,  
West Virginia.

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Tara Arthur, CCR

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19  
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21

22

23

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1 I N D E X

2 WITNESS

3 April Robertson

4 EXAMINATION

5 by Mr. Meade Page 04

6 EXHIBITS

7 None

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17 Reporter's Certificate: Page 74  
Errata Sheet/Signature Page: Enclosed

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5 EXAMINATION

6 BY MR. MEADE:

7 Q. Ms. Robertson, to start things off,  
8 would you please state your full name for  
9 the record?

10 A. April Lynn Robertson.

11 Q. Have you ever been deposed before?

12 A. No.

13 Q. Have you ever been involved in a  
14 deposition before?

15 A. Yes.

16 Q. In what capacity?

17 A. Yours.

## 18 O. So as counsel?

19 A. Yes.

20 Q. So you already know the rules. You  
21 know how these things work. But just for  
22 the sake of the record, I will go through a  
23 couple of basic things.

24 Obviously, the answers to questions

1 need to be audible. The court reporter  
2 can't really take down nods and hand  
3 gestures and things like that. If you don't  
4 understand anything that I ask, feel free to  
5 just ask me to repeat myself or to go into a  
6 little more detail.

7 As we go through this, if you need  
8 to take a break, just ask for it. That's  
9 fine. We can take as many breaks as you  
10 would like.

11 If your attorney at any point  
12 during this objects to something, that's for  
13 the purposes of admission or admissibility  
14 down the road. Continue to answer the  
15 question. If there needs to be any sort of  
16 break or conversation, we can handle that at  
17 that point.

18 Other than that, would you care to  
19 go into some detail -- what is your current  
20 title at the Department of Health and Human  
21 Resources?

22 A. General counsel.

23 Q. Okay. How long have you been in  
24 that role?

1           A. Since May of 2019.

2           Q. So then you have been general  
3        counsel at the DHHR for the entirety of the  
4        pendency of this litigation?

5           A. Yes.

6           Q. Were you affiliated with the  
7        Department of Health and Human Resources  
8        prior to May of 2019?

9           A. Yes.

10          Q. What role were you in prior to  
11        that?

12          A. Interim general counsel and  
13        assistant general counsel and general  
14        counsel for the Office of Inspector General.

15          Q. So, in totality, how long have you  
16        been involved in some aspect with the  
17        Department of Health and Human Resources?

18          A. Just about 12 years.

19          Q. So have you been involved in your  
20        capacity as either general counsel or  
21        assistant general counsel or interim general  
22        counsel -- from now on, I will just say  
23        general counsel -- with any prior litigation  
24        against the Department of Health and Human

1       Resources?

2           A.   What do you mean by involved?

3           Q.   Have you been involved in  
4   specifically the discovery process or  
5   production of documents?

6           A.   No.

7           Q.   Have you ever had to have contact  
8   with the West Virginia Office of Technology  
9   in your role as general counsel other than  
10   in this suit?

11          A.   Yes.

12          Q.   Can you give me some detail exactly  
13   about what that prior involvement was?

14          A.   Sending litigation holds to them.

15          Q.   Do you have any idea about how many  
16   times that you have sent a litigation hold  
17   to the Office of Technology?

18          A.   Over 20 times.

19          Q.   And is that fairly frequent, or is  
20   that 20 times sparsed out between the decade  
21   or so that you have been employed with the  
22   department?

23          A.   Sparsed out since 2017.

24          Q.   So you did not ever issue a

1 litigation hold prior to 2017?

2 A. Correct.

3 Q. Does the Office of General Counsel  
4 have a typical procedure that is followed  
5 when it comes to issuing a litigation hold?

6 A. Yes.

7 Q. What is that policy?

8 A. I follow the litigation hold  
9 template that I inherited from my  
10 predecessors and alter it slightly depending  
11 on the case at issue and discuss with  
12 leadership in the department and the  
13 affected Bureau to determine who needs to be  
14 on the litigation hold.

15 Q. Once a hold is issued, do you have  
16 any ongoing involvement in the discovery  
17 process or the production of documentation?

18 A. No.

19 Q. In your experience, since you have  
20 begun issuing litigation holds - so back in  
21 2017 - have there ever been any issues  
22 regarding the production of electronically  
23 stored information from the West Virginia  
24 Office of Technology?

1           A. Not to my knowledge.

2           Q. Now, you just stated a moment ago  
3 you are not really involved in the discovery  
4 process; is that correct?

5           A. Correct.

6           Q. So unless there were an issue that  
7 rose to a significant level, would you be  
8 aware of any problems with the production of  
9 ESI?

10          A. Probably not.

11          Q. As general counsel, or maybe even  
12 more specifically as incoming assistant  
13 general counsel, did you receive any  
14 specific type of training on the  
15 preservation of electronically stored  
16 information?

17          A. No.

18          Q. To the best of your knowledge, is  
19 there any policy or procedure that is  
20 distributed within the department at large  
21 regarding the preservation of electronically  
22 stored information?

23          A. Not to my knowledge.

24          Q. If such a policy were to exist,

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1 would that be the province of the General  
2 Counsel's Office?

3 A. Yes.

4 Q. So would it stand to reason if such  
5 a policy existed, you would likely know of  
6 it?

7 A. Yes.

8 Q. On November 17th of this year, I  
9 believe you signed an affidavit regarding  
10 your involvement with the preservation of  
11 ESI in this case; is that correct?

12 A. Yes.

13 Q. Within that affidavit, you discuss  
14 something that is called deprovisioning of  
15 employees. Do you recall that?

16 A. Yes.

17 Q. Are you familiar with that process?

18 A. Yes.

19 Q. So within your affidavit, you note  
20 that the cabinet secretary in particular  
21 authorizes the deprovisioning of stored  
22 information or email accounts or what have  
23 you with outgoing personnel; is that  
24 correct?

1           A. Not exactly.

2           Q. Could you explain what exactly  
3       about that is not correct?

4           A. It's staff in the office of the  
5       cabinet secretary that deprovisions certain  
6       departing employees.

7           Q. Who determines which departing  
8       employees are deprovisioned?

9           A. I am only familiar with that  
10      process in the office of the cabinet  
11      secretary because that's where I am. And it  
12      would involve employees from our office.

13           Q. So General Counsel's Office is  
14      involved in the deprovisioning process?

15           A. Not exactly.

16           Q. So what role then does general  
17      counsel have in deprovisioning?

18           A. None.

19           Q. So have you yourself been involved  
20      in any of the discussions or decisions with  
21      -- involving the deprovisioning of outgoing  
22      staff who are named defendants in this  
23      action?

24           A. Yes.

1           Q. To what extent were you involved in  
2 those discussions or decisions?

3           A. Looking at the online fillable form  
4 with the secretary -- administrative  
5 secretary in the office who fills that  
6 out -- and there's -- to see what the  
7 questions are and to ask her how she  
8 typically answers them.

9           Q. What are the questions surrounding  
10 deprovisioning just as a general rule, if  
11 there are any typical questions?

12           A. It's an online fillable form  
13 provided by the West Virginia Office of  
14 Technology, what we refer to as OT. And  
15 it's primarily the employee's name, the date  
16 of their departure, when we want them to be  
17 deprovisioned. And that means have all of  
18 their access cut off to their accounts,  
19 their access cards to buildings.

20 Deprovisioning is an act of taking away  
21 someone's access.

22           Q. This form that you are talking  
23 about, is that form used in all  
24 deprovisioning?

1           A. I believe so. It's not our form.

2   It's OT's.

3           Q. So with regard to staff who were  
4   subject to a litigation hold in this matter  
5   who have since exited their roles at the  
6   department, would the deprovisioning form  
7   for those members still be in existence?

8           A. You would have to ask OT.

9           Q. And it's your testimony here today  
10   that that deprovisioning form is generated  
11   from the office of the cabinet secretary; is  
12   that correct?

13           A. It's filled in by the  
14   administrative secretary and submitted to  
15   OT, but just for the highly placed employees  
16   who work in the cabinet secretary's office.

17           Q. Okay. Highly placed employees,  
18   would that be individuals like deputy  
19   secretaries or the directors of the various  
20   agencies within the department?

21           A. Deputy secretary, yes. Bureau  
22   commissioners, probably. Lower than that, I  
23   couldn't say.

24           Q. Okay. So then just for example,

1 the former commissioner for what was the  
2 Bureau for Children and Families, Linda  
3 Watts -- when she exited that role, if her  
4 account -- or there was authorization for  
5 her deprovisioning, if that occurred, that  
6 would have been filled in and sent to the  
7 Office of Technology by the administrative  
8 secretary and the cabinet secretary's  
9 office; is that correct?

10 A. That would be speculation on my  
11 part.

12 Q. Well -- and again, if she were  
13 deprovisioned, is that how that process  
14 would work?

15 A. I don't know if someone at the  
16 Bureau for Children and Families would have  
17 taken care of that at that time.

18 Q. To the best of your knowledge, were  
19 any of the named defendants in this matter  
20 authorized for deprovisioning since this  
21 case has been pending?

22 A. As soon as someone leaves, their  
23 access to their state accounts is  
24 terminated.

1           Q. Who at the Office of Technology  
2 receives the authorization for  
3 deprovisioning?

4           A. Her first name is Ruby. I don't  
5 know her last name.

6           Q. Is that a specific position within  
7 the Office of Technology?

8           A. You would have to ask OT.

9           Q. So you are just not aware?

10          A. No.

11          Q. Are the authorizations, these  
12 fillable forms for deprovision, are those  
13 something that are also kept by the  
14 department, or are those purged after they  
15 are sent to the Office of Technology?

16          A. I don't believe it is something  
17 that can be downloaded and printed or saved  
18 in any way.

19          Q. What do you mean by that? You said  
20 it was a fillable form; is that right?

21          A. Yes. You fill it in and hit send.  
22 I have not participated in the process  
23 myself.

24          Q. So you don't know whether or not

1 there is, for example, a PDF of that  
2 completed form that is preserved by the  
3 department?

4 A. I don't know.

5 Q. Have you actually read one of these  
6 fillable forms for deprovisioning?

7 A. I have looked over the shoulder of  
8 the administrative secretary and read the  
9 fields that she must fill in when  
10 deprovisioning someone -- excuse me --  
11 requesting that someone be deprovisioned.

12 Q. Does the Office of Technology ever  
13 refuse to deprovision someone who has been  
14 authorized for deprovisioning?

15 A. You would have to ask them.

16 Q. Are you aware of that ever  
17 occurring?

18 MR. BROWN: This is sort of  
19 an objection. Because I think you need  
20 to define the term "deprovisioning" for  
21 the questions that you are asking and the  
22 answers that you are getting.

23 MR. MEADE: Well, and I  
24 think we can do that just for the sake of

1 --

2 Q. As you have been answering these  
3 questions regarding deprovisioning, what are  
4 you taking that word to mean?

5 A. Cutting off a departing employee's  
6 access to the state system.

7 Q. Okay. And then I think we can use  
8 that definition. That's fine. That's my  
9 understanding of it.

10 MR. BROWN: Okay.

11 Q. But within this fillable form for  
12 deprovisioning, is there anything which  
13 addresses the possibility of pending  
14 litigation holds with regard to outgoing  
15 staff?

16 A. There is not.

17 Q. After any of the named defendants  
18 or individuals within this matter that were  
19 subject to a litigation hold -- after they  
20 departed employment by the department, did  
21 the General Counsel's Office follow up with  
22 the Office of Technology to ensure that  
23 their electronically stored information was  
24 being preserved?

1           A. No.

2           Q. Why?

3           A. I had no reason to assume that  
4 there would be any problem.

5           Q. Ms. Robertson, did you read the  
6 affidavit that was provided by the chief  
7 information officer for the Office of  
8 Technology that was submitted as an exhibit  
9 to the Defendants' Response to our Motion  
10 for Sanctions in this case?

11          A. Yes.

12          Q. Are you aware then that the Office  
13 of Technology's policy for deleting emails  
14 and things of that nature after 30 days has  
15 been in place for at least a decade?

16          A. I am now.

17          Q. You were not previously aware of  
18 that policy; is that your statement?

19          A. Define "previously."

20          Q. Prior to let's say September of  
21 this year, were you aware of the Office of  
22 Technology's policy regarding deletion or  
23 purging of electronically stored information  
24 with regard to staff who has separated from

1 state employment?

2 A. I was not.

3 Q. Despite that policy having been in  
4 place the entire time that you have served  
5 as general counsel, you were not aware of  
6 that?

7 A. Correct.

8 Q. Is it your practice upon sending a  
9 litigation hold to have any follow-up  
10 communication with the Office of Technology?

11 A. No.

12 Q. In your affidavit, which was I  
13 believe -- I think Exhibit A to the  
14 Defendants' Response and Opposition to our  
15 Motion for Sanctions, you stated that you  
16 submitted or sent a litigation hold in  
17 December of 2019; is that right?

18 A. Yes.

19 Q. Were you asked to do that?

20 A. I don't remember exactly. But I  
21 assume that we had some discussions with  
22 leadership and policy folks who worked with  
23 the subject matter of this litigation and  
24 possibly outside counsel.

1                   Q. Is the West Virginia Attorney  
2 General's Office ever involved in  
3 discussions regarding litigation holds?

4                   A. Not with me.

5                   Q. Okay. So the Attorney General's  
6 Office did not contact you with regard to a  
7 litigation hold in this case?

8                   A. I don't remember.

9                   Q. If you have communication with the  
10 Attorney General's Office, is that typically  
11 conducted through email or by some other  
12 means?

13                  A. Various means.

14                  Q. Would that be by phone or anything  
15 else besides by phone?

16                  A. In person.

17                  Q. Is there any sort of I guess  
18 interoffice communication besides email,  
19 such as -- I don't know if you are familiar  
20 with Slack or an online chat or something  
21 like that?

22                  A. Our wv.gov network that OT provides  
23 to state executive branch agencies -- we are  
24 now on Google. And there is a chat feature,

1 what we use to refer to as instant message.

2 Q. Okay. And who has access to that  
3 system?

4 A. State employees.

5 Q. Is that all state employees?

6 A. Who are on the Google system.

7 Q. All right. Is there any specific  
8 designation that determines who is given  
9 access to the Google system?

10 A. The decision was made a few years  
11 ago to the transition executive branch  
12 agencies from the Microsoft Office suite of  
13 products over to the Google suite of  
14 products.

15 Q. Do you know whether or not the  
16 cabinet secretary for the Department of  
17 Health and Human Resources has access to  
18 that system?

19 MR. BROWN: Objection. Vague.

20 A. I have no reason to doubt that the  
21 cabinet secretaries do have access to that.

22 Q. Have you ever had communication  
23 with a cabinet secretary through that  
24 system?

1 MR. BROWN: Objection. Vague.

2 A. I don't think so. You are talking  
3 about the chat feature?

4 Q. The chat feature specifically.

5 A. No.

6 Q. When this litigation hold was sent  
7 in 2019, was it sent by email? By regular  
8 mail? In-person delivery? How was it sent  
9 to its intended recipients?

10 A. Email.

11 Q. Was that email -- was it just a  
12 group email? Was it individual emails to  
13 each person intended to be included?

14 A. Group.

15 Q. Did you receive any responses to  
16 that email?

17 A. Yes.

18 Q. Do you still have those email  
19 responses?

20 A. Yes.

21 Q. Did you receive a response from  
22 each of the individuals that were sent that  
23 litigation hold?

24 A. No.

1           Q. Do you recall which individuals you  
2 received a response from?

3           A. I do have a list of those. I would  
4 have to refer to the list to refresh my  
5 recollection.

6           Q. Do you know whether or not the  
7 response emails to your litigation hold have  
8 been produced at all in response to this  
9 discovery issue that we are currently  
10 conducting a deposition over?

11          A. I don't know the answer to that  
12 question.

13          Q. Have you provided those response  
14 emails to the Attorney General's Office or  
15 outside counsel?

16          A. I believe outside counsel has them.

17          Q. Okay. The litigation hold that you  
18 provided as a -- we will call it an exhibit  
19 to your affidavit, specifically the document  
20 which is numbered 3991 in the docket entries  
21 for the pending federal case -- there is a  
22 final page which says Acknowledgement. Do  
23 you know what page I am referring to?

24          A. Yes.

1           Q. What is the purpose of that  
2 acknowledgement?

3           A. To make sure people received the  
4 litigation hold.

5           Q. Did you receive any signed  
6 acknowledgements from the individuals who  
7 were subject to this litigation hold?

8           A. Yes.

9           Q. Did you receive a signed  
10 acknowledgement from anyone at the West  
11 Virginia Office of Technology?

12           A. No.

13           Q. If you did not receive an  
14 acknowledgement, how are you certain that  
15 the Office of Technology actually reviewed  
16 this hold?

17           A. I can't speak to what they may read  
18 or not read in their inboxes.

19           Q. Isn't the purpose of this  
20 acknowledgement to determine whether or not  
21 they read it?

22           A. The purpose in my mind is primarily  
23 to make sure our DHHR folks are seeing it  
24 and making sure that they understand.

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1                   Q. So did you receive a signed  
2 acknowledgement to the litigation hold from  
3 all of the individuals within the DHHR who  
4 received a copy of it?

5                   A. No.

6                   Q. Did you have any follow-up  
7 conversations with any of the individuals  
8 that you sent the litigation hold to but did  
9 not provide a signed acknowledgement?

10                  A. I did not.

11                  Q. Why?

12                  A. Because the Bureau attorney who  
13 monitors any sort of litigation affecting  
14 their Bureau takes over monitoring cases at  
15 that point. And my role really at that  
16 point is done.

17                  Q. Who is the attorney who is  
18 monitoring -- who is the Bureau attorney who  
19 is monitoring this action?

20                  A. Then?

21                  Q. Then and now.

22                  A. Well, then it was Cammie Chapman.

23                  Q. If an acknowledgment was signed and  
24 returned, would it have been sent to Cammie

1 Chapman, or would it have been sent to you?

2 A. Neither.

3 Q. Who would receive these return  
4 acknowledgements?

5 A. Our paralegal.

6 Q. And who supervises your paralegal?

7 A. Me.

8 Q. You mentioned that you have  
9 submitted litigation holds since -- well,  
10 about 20 since 2017; is that right?

11 A. Give or take.

12 Q. Is this acknowledgement included on  
13 all of the form litigation holds that you  
14 send?

15 A. Yes.

16 Q. Do you know whether or not these  
17 acknowledgements are typically signed and  
18 returned?

19 A. We do not get a 100 percent return  
20 rate typically.

21 Q. Who within the Department of Health  
22 and Human Resources is responsible for  
23 ensuring that discoverable documentation is  
24 preserved in the pendency of litigation?

1           A. Can you define discoverable  
2 documentation?

3           Q. Any documentation -- so, for  
4 example, in our current lawsuit -- this case  
5 involves the management of the foster care  
6 system as a whole. Any documentation which  
7 would pertain to the management or operation  
8 of the foster care system, at least it would  
9 be our contention, would be subject  
10 potentially to discovery in this matter and  
11 the purpose of this litigation hold.

12           When a litigation hold is issued,  
13 who within the department is responsible for  
14 ensuring that that litigation hold is  
15 actually carried out and is actually  
16 enforced?

17           A. It is up to each individual  
18 receiving the litigation hold to manage  
19 their own documents, be they paper documents  
20 or documents on their computers. And OT  
21 manages the email preservation.

22           Q. So would it be your position then  
23 that follow-up with the Office of  
24 Technology, if it were required, would be

1 the responsibility of the individuals  
2 subject to the litigation hold and not your  
3 office?

4 A. I'm sorry. Can you ask that again?

5 Q. Yes. So if follow-up with the  
6 Office of Technology regarding a litigation  
7 hold were needed, would that be the  
8 responsibility of the individual that was  
9 subject to that litigation hold, or would  
10 that be the responsibility of General  
11 Counsel's Office?

12 A. What do you mean by follow-up?

13 Q. Determining whether or not a  
14 litigation hold was in fact in place at the  
15 Office of Technology?

16 A. I had no reason to believe that the  
17 litigation holds weren't in place at OT. So  
18 it didn't -- why would follow-up be  
19 necessary?

20 Q. Well, you just stated a moment ago  
21 that you did not receive any signed  
22 acknowledgements from the West Virginia  
23 Office of Technology; is that right?

24 A. Correct.

1                   Q. So if you didn't receive an  
2 acknowledgement, or to the best of your  
3 knowledge, no one did, why would you assume  
4 that that litigation hold was put in place?

5                   A. Because the sent email went  
6 through. And they are in charge of email.

7                   Q. But you don't know today whether or  
8 not you received any confirmation from the  
9 Office of Technology that these litigation  
10 holds were received and implemented?

11                  A. That's not true. I do know that OT  
12 did not provide confirmation, those forms  
13 you are pointing to there.

14                  Q. And is it also your testimony today  
15 that the Office of Technology did not  
16 respond or confirm via email regarding their  
17 receipt of a litigation hold?

18                  MR. BROWN: Objection. Are you  
19 asking what she knew at the time or what she  
20 knows now?

21                  MR. MEADE: I am asking what she  
22 knew at the time.

23                  A. Can you ask it again?

24                  Q. I can.

1                   So at the time -- or within 60 days  
2    of these litigation holds being sent to the  
3    Office of Technology, did you receive any  
4    confirmation email or other communication  
5    from the Office of Technology regarding  
6    receipt of the hold?

7                   A. I did not.

8                   Q. Is it your testimony today that  
9    prior to September of this year, you did not  
10   know whether or not these litigation holds  
11   were put in place by the Office of  
12   Technology?

13                  A. That is correct. I assumed they  
14    were in place. I had been sending them  
15    since 2017. And whoever was heading up OT  
16    in each of those years never reached back to  
17    say, hey, these memos are deficient in any  
18    way.

19                  Q. When these litigation holds are  
20    sent - whether in this case or in other  
21    cases where you have sent them - who  
22    typically at the Office of Technology  
23    receives them?

24                  A. Whoever is the head of that agency

1 at the time.

2 Q. So would it be the chief  
3 information officer that receives them?

4 A. I don't know what their exact  
5 working title is.

6 Q. Okay. Now, are there any other  
7 individuals within -- let me rephrase that.

8 Is there any other specific  
9 position in the staff at the Office of  
10 Technology that would be a recipient  
11 directly from your office of a litigation  
12 hold?

13 A. Now there is.

14 Q. Would that have been the case in  
15 2019?

16 A. No.

17 Q. To the best of your knowledge, did  
18 anyone at the Department of Health and Human  
19 Resources follow up with the West Virginia  
20 Office of Technology when named defendants  
21 in this action, or other staff that were  
22 subject to your litigation hold, departed  
23 the agency, they left?

24 A. I believe it was discovered in

1 September that there was a problem with the  
2 emails of those who had departed.

3 Q. But at the time of those particular  
4 members of staff, employees of the  
5 department -- at the time of their exit, to  
6 the best of your knowledge, did anyone reach  
7 out to the Office of Technology regarding  
8 these litigation holds?

9 A. Not to my knowledge.

10 Q. Did anyone from your office in  
11 particular reach out to the Office of  
12 Technology regarding these litigation holds?

13 A. Not to my knowledge.

14 Q. Are you aware that in 2021, this  
15 particular litigation was dismissed by the  
16 District Court?

17 A. I will take your word for it.

18 Q. Well, were you aware in 2021 that  
19 that occurred?

20 A. I probably was.

21 Q. All right. At the time of that  
22 dismissal by the District Court, did anyone  
23 from your office reach out to the Office of  
24 Technology regarding the ongoing

1 enforceability of these litigation holds?

2 A. No.

3 Q. To the best of your knowledge, did  
4 anyone at the Department of Health and Human  
5 Resources reach out to the Office of  
6 Technology regarding litigation holds for  
7 this case?

8 A. No.

9 Q. Do you have any reason -- or can  
10 you explain why that would be, why no one  
11 would follow up with the Office of  
12 Technology?

13 MR. BROWN: Objection. Can you  
14 clarify what time frame you are talking  
15 about?

16 Q. Specifically at the time of this  
17 matter's dismissal by the District Court  
18 judge, why would no one from your office  
19 have reached out to the Office of Technology  
20 to discuss these litigation holds?

21 A. Probably because dismissal at the  
22 District Court level is not necessarily the  
23 end of the litigation, as evidenced by the  
24 fact that we are still here.

1           Q. Is that something that you would  
2 expect employees at the Office of Technology  
3 to be aware of?

4           A. No. Other than outside counsel has  
5 been working throughout the pendency of this  
6 matter on -- with folks from OT on  
7 voluminous amounts of discovery.

8           Q. In your role as general counsel,  
9 following your production and distribution  
10 of this litigation hold, did you have any  
11 discussions with any of the individuals  
12 subject to the hold regarding their own  
13 efforts to preserve electronically stored  
14 information?

15           A. I did not.

16           Q. Are you capable of testifying here  
17 today whether or not any of the named  
18 individuals on your litigation hold took  
19 independent action to preserve their own  
20 electronically stored information?

21           A. I cannot.

22           Q. I am trying to think of the best  
23 way to say this. Are individuals who are in  
24 charge of the management of the department

1 or any of its various agencies issued cell  
2 phones by the State of West Virginia?

3 A. Yes.

4 Q. Do any of the cell phones that were  
5 issued to staff at the department who were  
6 subject to this litigation hold -- do any of  
7 those state-issued cell phones still exist?

8 A. I am not the person who retains  
9 custody and control of state-issued  
10 equipment.

11 Q. Who would be the person that  
12 maintains custody and control of that  
13 equipment?

14 A. It is my understanding that OT is  
15 responsible for state-issued equipment in  
16 terms of accessing what is on pieces of  
17 equipment. But our Office of Management  
18 Information Services I believe can take care  
19 of those different devices.

20 Q. So you say that they can take care  
21 of them. But is it that particular office  
22 -- I think you said it was management -- I'm  
23 sorry. I've lost it already. Management of  
24 information -- I apologize. Do you mind

1 repeating what the name of that entity was?

2                   A. Office of Management Information  
3 Services.

4                   Q. Office of Management Information  
5 Services. Does that office maintain devices  
6 that are distributed to state employees?

7                   A. I believe so. But even they need  
8 to be granted administrator access from OT  
9 in order to log on, if you will, to do any  
10 searching.

11                  Q. Was that office, specifically of  
12 Management Information Services, provided  
13 with a litigation hold for this case?

14                  A. Yes.

15                  Q. They were. Do you know who  
16 specifically at that office was provided  
17 with a litigation hold?

18                  A. Yes.

19                  Q. Would that have been Shawn Charles?

20                  A. Yes.

21                  Q. Do you know whether or not any  
22 device that was issued to a state employee  
23 who was subject to this litigation hold has  
24 been preserved?

1           A. I don't know.

2           Q. Since discovering the issues  
3 regarding purged emails by the Office of  
4 Technology, has your office attempted to  
5 reach out to the Management Information  
6 Services or the Office of Technology  
7 regarding preservation of devices such as  
8 cell phones or laptops?

9           A. Yes.

10          Q. Based upon those conversations, can  
11 you state whether or not any of those  
12 devices have been preserved?

13          A. I believe there is at least one  
14 computer that was maintained following an  
15 employee's departure.

16          Q. Do you know which employee that  
17 laptop belonged to?

18          A. Bill Crouch.

19          Q. Do you know whether or not Bill  
20 Crouch had a state-issued cell phone?

21          A. Yes.

22          Q. Do you know whether or not that  
23 state-issued cell phone has been preserved?

24          A. I do not know.

1           Q. When you say you don't know, are  
2 you stating that the Office of Technology  
3 or the Office of Information Services has  
4 not affirmatively told you that they were  
5 preserved?

6           A. Yes.

7           Q. Have they indicated to you that  
8 they were not preserved?

9           A. They have not told me that either.

10          Q. Since this lawsuit has been  
11 pending, there have been some change ups in  
12 the administration at DHHR, specifically  
13 with the exit of Secretary Crouch and Deputy  
14 Secretary Jeremiah Samples, as well as other  
15 individuals who were listed on your  
16 litigation hold; is that correct?

17          A. Yes.

18          Q. When incoming replacement staff,  
19 let's say, such as Jeff Coben, took their  
20 positions, were they provided with a  
21 litigation hold?

22          A. Is your question solely about Jeff  
23 Coben?

24          Q. It has to do with any incoming or

1 replacement supplemental staff that have  
2 come in to fill the positions previously  
3 held by individuals subject or at least  
4 included within your litigation hold.

5 A. They were not given a litigation  
6 hold for this matter.

7 Q. Why is that?

8 MR. BROWN: Are you asking about  
9 any individual specifically?

10 Q. Just in particular, we can talk  
11 about Jeff Coben. Why was Jeff Coben not  
12 given a litigation hold with regard to this  
13 matter?

14 A. His tenure with us was intended to  
15 be temporarily -- temporary and brief. And  
16 every week we talked to him about when his  
17 departure date would be, and it was unknown.  
18 And his involvement in minute details of  
19 every pending case was extremely limited.  
20 So it frankly did not occur to us to put him  
21 on pre-existing litigation holds. As the  
22 interim cabinet secretary at the time,  
23 however, any new litigation holds that were  
24 coming in, the cabinet secretary is always

1 included. So his name is on at least one.

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2 Q. Just to clarify though. It is your  
3 testimony here today that no one who has  
4 come in to a position that was formerly  
5 subject or is subject to this litigation  
6 hold was sent with an updated litigation  
7 hold upon taking those positions?

8 A. Not upon their taking those  
9 positions.

10 Q. Prior to September of this year,  
11 were any supplemental or replacement or  
12 incoming staff taking the positions of  
13 individuals who were subject to this  
14 litigation hold sent a litigation hold?

15 A. No. For this case, no.

16 Q. So is it your testimony then today  
17 that no supplementary litigation holds were  
18 sent to anyone until the issue regarding ESI  
19 preservation by the Office of Technology  
20 became apparent?

21 A. Correct.

22 Q. Why did your office not send  
23 litigation holds to non-temporary --  
24 non-interim incoming staff?

1                   A. The decision as to whether a  
2 litigation hold is even issued in the first  
3 place -- as I said earlier, I have issued  
4 approximately 20, maybe a few more over the  
5 last several years. Obviously, DHHR has  
6 many more pending cases and settled cases in  
7 those same years. A litigation hold isn't  
8 issued for every case. That's a decision  
9 that is made after discussion with  
10 leadership and our outside defense counsel  
11 and sometimes at the request of plaintiffs'  
12 counsel.

13                  Q. But it's your testimony that that  
14 discussion regarding the necessity of the  
15 litigation hold was had with regard to this  
16 matter; is that correct?

17                  A. In 2019.

18                  Q. And upon the departure of  
19 individuals who were subject to that  
20 litigation hold, was there no additional  
21 discussion about implementing that hold with  
22 regard to incoming employees?

23                  A. No.

24                  Q. So is it your testimony here today

1 then that no one asked your office to issue  
2 additional litigation holds to incoming  
3 employees of the Department of Health and  
4 Human Resources?

5 A. That's correct.

6 Q. How was the decision made regarding  
7 which individuals would be subject to a  
8 litigation hold and which would not?

9 A. As I recall, in this particular  
10 case, there was a discussion with leadership  
11 and perhaps outside counsel at the time, I  
12 don't really remember, about including those  
13 individuals with policy-making functions  
14 over the Bureau for Children and Families  
15 and/or supervisory roles with the field  
16 operations. And that's how the individuals  
17 on the 2019 litigation hold were determined.

18 Q. When individuals who were subject  
19 to that litigation hold exited their  
20 positions with the Department of Health and  
21 Human Resources, to the best of your  
22 knowledge, was there any sort of debrief  
23 with them regarding preservation of their  
24 electronically stored information?

1           A. I don't know.

2           Q. Do you know why individuals --  
3       well, let me start over there. If I  
4       indicated to you that electronically stored  
5       information for Jane McCallister was at some  
6       point produced in this case, would you have  
7       any reason to disagree with that?

8           A. I wouldn't have any knowledge one  
9       way or the other.

10          Q. Was Jane McCallister an individual  
11       that was subject to the litigation hold that  
12       you distributed in December of 2019?

13          A. I don't remember her name being on  
14       the litigation hold, but I would have to  
15       reference the document myself.

16          Q. Are all of the individuals that  
17       were included on the litigation hold listed  
18       on the document itself?

19          A. Can you ask that again?

20          Q. Yes. The document -- the  
21       litigation hold that your office produced,  
22       were all of the individuals who were subject  
23       to that hold named within that document?

24          A. No. Because in the body of the

1 document itself, it instructs the recipients  
2 that if they supervise or work with others  
3 that they know may have responsive  
4 information, that they are to share the  
5 litigation hold or let them know about this  
6 effort to preserve.

7 Q. Okay. To the best of your  
8 knowledge, were any of the individuals named  
9 within the litigation hold followed up with  
10 regarding whether or not they provided this  
11 document to individuals that they supervise?

12 A. I cannot answer that one way or  
13 another. I assume, based on the amount of  
14 discovery that has gone on in this  
15 particular case that I was not privy to,  
16 that all of those kind of conversations  
17 likely may have taken place. But --

18 Q. But you don't know?

19 A. But I would not be the person with  
20 firsthand knowledge of those conversations.

21 Q. So to just clarify then. You don't  
22 know whether or not those sort of  
23 conversations occurred?

24 A. No.

1           Q. So is it your statement here today  
2        that this litigation hold was intended to  
3        apply to individuals other than just those  
4        who are specifically named on it?

5           A. Yes.

6           Q. How would the West Virginia Office  
7        of Technology know to preserve ESI for  
8        individuals who were not listed on the  
9        litigation hold that was provided to the  
10      Office of Technology?

11           A. Unless during discovery our counsel  
12        working with the folks at OT who were doing  
13        the searching -- based on the discovery  
14        requests and the search terms and the named  
15        individuals, they may have known through  
16        that one-on-one work.

17           Q. So is it your testimony then that  
18        the Office of Technology would know about  
19        other individuals subject to the hold if  
20        they were told by someone other than your  
21        office?

22           A. It would come up organically during  
23        the discovery process, the names of the  
24        individuals whose accounts were being

1 searched.

2 Q. Was the Office of Technology at any  
3 point in time instructed to preserve  
4 electronically stored information for all  
5 individuals for whom discovery was produced  
6 in this matter?

7 A. I don't know.

8 Q. Other than this litigation hold,  
9 did the Department of Health and Human  
10 Resources send anything to the Office of  
11 Technology to preserve electronically stored  
12 information?

13 A. Again, I am not involved in the  
14 discovery process of this case or any other  
15 case, so I can't say.

16 Q. But you were involved in the  
17 production and distribution of the  
18 litigation hold from 2019; is that correct?

19 A. Yes.

20 Q. So did your office generate any  
21 other documents regarding preservation of  
22 electronically stored information that was  
23 sent to the Office of Technology?

24 A. My office did not, other than at

1 the time Associate General Counsel Cammie  
2 Chapman was also in my office, and she was  
3 working closely with outside counsel on the  
4 defense of this case.

5 Q. Do you know whether or not Cammie  
6 Chapman provided a request or a directive to  
7 the Office of Technology to preserve  
8 electronically stored information for any  
9 individual that is not listed on the 2019  
10 litigation hold?

11 A. I don't believe that she did.

12 Q. If an individual leaves the  
13 employment of the Department of Health and  
14 Human Resources but remains an employee of  
15 the state government of West Virginia, to  
16 the best of your knowledge, would that  
17 individual's accounts still be authorized  
18 for deprovisioning, the same deprovisioning  
19 that we have been discussing throughout this  
20 deposition?

21 A. Their access to DHHR information  
22 would be deprovisioned, but they might still  
23 have a wv.gov email address. And I don't  
24 know behind the scenes how OT differentiates

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1 someone's access from one department to  
2 another -- you know, when those transfers  
3 occurred. Sometimes the person's email  
4 address is altered slightly. I know of  
5 particular cases where that has occurred.  
6 OT assigns us our email addresses. We don't  
7 get to choose.

8 Q. Okay.

9 A. So from my -- for example, mine is  
10 April.L.Robertson@wv.gov. If I went to  
11 another state agency, it might become just  
12 April.Robertson@wv.gov with no middle  
13 initial. I know of particular people who  
14 have joined our organization that that has  
15 happened to.

16 Q. Since discovering that information  
17 was not preserved by the Office of  
18 Technology in this case, have you had a  
19 conversation with anyone within that office  
20 regarding their 30-day deletion policy?

21 A. Yes. In recent months, yes.

22 Q. Who specifically have you spoken to  
23 at the Office of Technology regarding that  
24 policy?

1                   A. Heather Abbott, Danielle Cox,  
2   Jennelle Jones. Those are the three main  
3   ones.

4                   Q. Do you know, based upon your  
5   conversations with those individuals  
6   employed at the Office of Technology,  
7   whether or not the policy of deleting  
8   electronic information only applies to  
9   individuals who are leaving employment by  
10   the state government? Or does that policy  
11   also apply to individuals who are simply  
12   shifting to another position within state  
13   government?

14                   MR. BROWN: Objection. Outside  
15   of the scope.

16                   A. I don't know how OT differentiates  
17   in those transfer situations.

18                   Q. So then if the electronically  
19   stored information of some of the  
20   individuals listed within your litigation  
21   hold still exists, despite them having left  
22   employment by the department, you would not  
23   know why it is that their information was  
24   preserved?

1                   A. I'm sorry. Can you ask that again?

2                   Q. So do you know why the information  
3 of some or an individual included in your  
4 litigation hold would be preserved and  
5 available despite them having left  
6 employment by the DHHR?

7                   MS. BROWN: Objection. Are you  
8 inquiring about a specific person?

9                   Q. I am specifically -- do you have  
10 any idea why the electronic information of  
11 Jeremiah Samples continues to exist despite  
12 the fact that he has departed employment by  
13 the Department of Health and Human  
14 Resources?

15                  A. I didn't know that it does.

16                  Q. Do you know whether or not the  
17 electronically stored information of any of  
18 the named individuals on your litigation  
19 hold continues to exist following their  
20 departure from the department?

21                  A. I believe it has been discovered  
22 because of emails they sent to other people  
23 who still work for the department. Those  
24 other people may have received information

1 or emails from those departed people. So in  
2 the To field, the From field, the cc field,  
3 those email accounts can be recreated, if  
4 you will.

5 Q. So it's your testimony then, at  
6 least based upon your understanding of how  
7 this electronic information is preserved,  
8 that communications between X employees of  
9 the department with current employees of the  
10 department, that those sort of emails still  
11 exist?

12 A. Sure.

13 Q. Do you know whether or not the  
14 Office of Technology is also in charge of  
15 things like voicemail or voice memos or  
16 other communication that takes place  
17 interagency within the state government?

18 A. On the telephone system?

19 Q. Yes.

20 A. I cannot answer that 100 percent.

21 I don't -- maybe. I don't know.

22 Q. Based upon the discussions that you  
23 have had with the Office of Technology, do  
24 you know whether or not they have performed

1 any search of either devices that were  
2 provided to personnel who were subject to  
3 the litigation hold or other means of  
4 electronic communication since determining  
5 that the emails in particular of these  
6 individuals was purged?

7 A. I don't know what devices have been  
8 searched.

9 Q. So then is it your testimony that  
10 you have not had a conversation with the  
11 Office of Technology regarding that  
12 particular issue?

13 A. I believe Heather Abbott  
14 communicated to us that it would be cost  
15 prohibitive to maintain everything that is  
16 on every device that's ever issued to a  
17 state employee and that that is not their  
18 custom -- you know, their practice.

19 Q. Is it your testimony today that  
20 between December 4, 2019 -- and I will  
21 represent to you that's the date on your  
22 litigation hold -- and October of this year,  
23 2023, you were not aware that anyone  
24 followed up with the Office of Technology

1       regarding a litigation hold for this pending  
2       case?

3               A. I believe there was some  
4       communication between outside counsel and OT  
5       in September regarding searching, you know,  
6       through the discovery process. And  
7       litigation holds may have been mentioned in  
8       some of those conversations.

9               Q. Do you know whether any sort of  
10      communication with the Office of Technology  
11      regarding litigation holds has been had  
12      between December of 2019 and September of  
13      2023 -- so prior to September of 2023?

14               A. I don't have that information.

15               Q. Did anyone from the West Virginia  
16      Attorney General's Office reach out to your  
17      office or to you in particular between  
18      December of 2019 and September of 2023  
19      regarding these litigation holds?

20               A. Not that I can recall.

21                            MR. MEADE: Let's take maybe  
22      just a quick five minutes.

23                            (Break in proceedings.)

24      BY MR. MEADE:

1 Q. Ms. Robertson, just continuing on.

2 I think I have only got a handful more  
3 questions for you. We can all get about our  
4 day.

5 So you testified earlier that you  
6 have created a list of the individuals who  
7 provided a response to the litigation hold  
8 that you sent out in 2019; in this correct?

9 A. Yes.

10 Q. Why did you create that list?

11 A. To prepare for this deposition.

12 Q. Do you have that list?

13 A. Yes.

14 Q. Are you able to produce that list?  
15 Are you willing to provide a copy of it?

16 A. Just the litigation hold with check  
17 marks by their names, the ones who have  
18 turned in -- yes.

19 Q. So it would be the individuals  
20 listed on the 2019 litigation hold with  
21 check marks next to their names?

22 A. Yes.

23 Q. Do you recall which individuals  
24 would be indicated to have returned a

1 response?

2 A. Not without looking at the  
3 reference document.

4 Q. Would you produce the list with the  
5 check marks included on it?

6 MS. BROWN: We can do that  
7 after.

8 MR. MEADE: Yes. It doesn't  
9 have to be right now.

10 MS. BROWN: Yes.

11 MR. MEADE: But just at some  
12 point. I just want to make sure that it is  
13 still around.

14 Q. Now, in your 2019 litigation hold,  
15 would you agree with me that there is  
16 nothing within the body of that document  
17 itself which would indicate to the Office of  
18 Technology who in particular they should be  
19 preserving electronically stored information  
20 for?

21 A. I would not agree with that.

22 Q. Why would you not agree with that?

23 A. Because their names are on the  
24 document.

1                   Q. Does the document say that the  
2 Office of Information -- or the Office of  
3 Information Technology is supposed to  
4 preserve the information of the individuals  
5 included in the To line on this letter?

6                   A. As a recipient included in the To  
7 line, that recipient should have read the  
8 entire memo and realized that preservation  
9 was at the heart of the memo. And since OT  
10 is in charge of our email accounts, I think  
11 it's a reasonable inference.

12                  Q. So then is it your testimony that  
13 you would assume the Office of Technology  
14 would know just because these individuals  
15 are included in the To line on the  
16 litigation hold?

17                  A. Yes.

18                  Q. And again -- I know we have gone  
19 over this a couple of times. But you  
20 personally have not had any follow-up  
21 conversation prior to 2023 with the Office  
22 of Technology regarding who should be  
23 subject to this litigation hold?

24                  A. Correct.

1           Q. Now, your office has also generated  
2 a more recent memorandum and litigation hold  
3 regarding this case; is that correct?

4           A. Yes.

5           Q. And that was produced and  
6 distributed in early October of this year?

7           A. Yes.

8           Q. Attached to that memorandum  
9 regarding litigation hold, there is a list  
10 of litigation -- it's called the October 10,  
11 2023 Litigation Hold Distribution List. Are  
12 you familiar with that list?

13          A. Yes.

14          Q. Why did you include a list with all  
15 of these different named individuals in your  
16 2023 litigation hold but not with your 2019  
17 litigation hold?

18          A. Because the new list is two pages  
19 long. And it just made sense to do it this  
20 way.

21          Q. So then is it your statement today  
22 that the intent of that list on the 2023  
23 memorandum is the same as the To line in the  
24 2019 --

1           A. Yes.

2           Q. -- litigation hold?

3           Why wasn't a litigation hold sent  
4 in this case prior to December of 2019?

5           A. As I stated before, litigation  
6 holds are not sent in every case. It is at  
7 someone's request, either defense counsel,  
8 plaintiffs' counsel -- for various reasons.

9 And we issued the litigation hold in  
10 December of 2019 because we were asked to.

11           Q. And would that hold have been sent  
12 out relatively close in time to when the  
13 request was issued?

14           A. Yes.

15           Q. Now, you provided some testimony  
16 regarding Cammie Chapman's role in your  
17 office at the time that this initial  
18 litigation hold was sent out. Do you know  
19 whether or not Cammie Chapman returned an  
20 acknowledgement of this litigation hold?

21           A. She did.

22           Q. Do you know whether or not Cammie  
23 Chapman -- as I believe at that time  
24 assistant general counsel -- had any

1 follow-up conversation with anyone either on  
2 the To line of the 2019 litigation hold or  
3 the Office of Technology in general?

4           A. As the associate general counsel  
5 assigned to the Bureau for Children and  
6 Families at that time, I am sure she had  
7 conversations with everybody in the To line  
8 with the exception perhaps of OT. But that  
9 would be speculation on my part.

10           Q. Would it have been Ms. Chapman's  
11 responsibility as associate counsel to  
12 ensure that this litigation hold was  
13 discussed with the individuals who would be  
14 subject to it?

15           MR. BROWN: Objection.

16           A. I think that -- you know, my role  
17 is to send out the litigation holds at the  
18 outset of litigation, or even prior to a  
19 complaint being filed, you know, when we  
20 receive in circuit court cases, for example,  
21 notices of intent to sue. And then  
22 management and monitoring of those  
23 individual cases then is transferred to the  
24 Bureau attorneys for whichever Bureau is

1 affected and our outside counsel. Sometimes  
2 it's private firms such as this case or the  
3 Attorney General's Office. It just depends.  
4 And at that point, my role -- I step back  
5 and let all of those people take over the  
6 management and direction of the defense of  
7 the case, including discovery.

8 Q. So then it's your testimony - just  
9 to make sure I am clear - that once your  
10 office issued this litigation hold, that  
11 Ms. Chapman, as associate counsel for the  
12 Bureau for Children and Families, would have  
13 had more involvement in the management of  
14 this case and anything to do with this  
15 litigation hold from that point forward?

16 A. Yes. Cammie was more hands on than  
17 I was.

18 Q. Okay. We talked at length earlier  
19 about deprovisioning. And I understand  
20 deprovisioning at this point essentially  
21 just means cutting off access to individuals  
22 who are leaving the employment of the  
23 department in particular as it relates to  
24 this case.

1                   And you have stated that you have  
2       had conversations with individuals from the  
3       Office of Technology regarding their at  
4       least prior policy of deleting outgoing  
5       staff's electronically stored information  
6       after 30 days.

7                   Based upon your conversations with  
8       the Office of Technology, is it your  
9       understanding that upon receiving  
10      authorization to deprovision exiting staff,  
11      the policy that was in place to delete  
12      electronically stored information was  
13      triggered? Meaning that 30 days after that  
14      authorization to deprovision was received,  
15      these deletions would occur?

16                  A. I have recently learned that that  
17      is how OT was interpreting the deprovisions,  
18      notwithstanding the previously issued  
19      litigation holds for any particular  
20      individuals. It was my understanding since  
21      2017 that litigation holds would supercede  
22      and take the place of any automated document  
23      or electronic destruction of records.

24                  Q. With regard to deprovisioning, when

1 an individual is leaving their position with  
2 the department, who is in charge of issuing  
3 authorization for that deprovision? Is that  
4 always the cabinet secretary's office, the  
5 administrative secretary as you previously  
6 testified, or would it be someone else in a  
7 supervisory role?

8 A. As you know, DHHR is a very large  
9 agency. The secretary in the secretary's  
10 office is not in charge of deprovisioning  
11 any one of the 6500 plus or minus employees.  
12 I don't know who are the other people  
13 throughout the rest of the department who  
14 may fill out that online fillable form that  
15 OT asks state agencies to submit when an  
16 employee leaves state employment.

17 Q. Okay. So you have previously  
18 testified that your office is occasionally  
19 involved with answering or reviewing the  
20 questions filled out on the deprovisioning  
21 form that is produced by the Office of  
22 Technology; is that right?

23 A. Yes.

24 Q. But your office -- would it be true

1 to say that your office is not involved in  
2 the deprovisioning of all employees that  
3 leave the Department of Health and Human  
4 Resources?

5 A. Correct.

6 Q. If an individual were to leave  
7 their position within one of the bureaus  
8 underneath the big umbrella that is the  
9 DHHR, would associate counsel for that  
10 Bureau be involved in the filling out or  
11 review of those deprovisioning forms?

12 A. No, not necessarily. It's a very  
13 simple form, like three or four questions  
14 max.

15 Q. To the best of your knowledge,  
16 given your over a decade of experience  
17 working for the department, are associate  
18 general counsel ever involved in discussions  
19 of authorization for deprovisioning exiting  
20 staff?

21 A. No. It's an HR function primarily.

22 Q. Why is it that the general  
23 counsel's office would be involved in some  
24 situations but associate counsel would not

1 be involved with their relevant Bureaus?

2           A. I have been involved in the  
3 deprovisioning of employees who worked for  
4 me. That's the distinction. And the  
5 cabinet secretary's secretary who  
6 deprovisions those folks happens to be in  
7 the suite of offices where my office is.  
8 And I make sure that -- when I know one of  
9 my people are leaving, I make sure she knows  
10 this is the date, cut them off.

11           Q. So then your involvement with that  
12 entire process is just limited to employees  
13 of your office?

14           A. Yes.

15           Q. In your role as general counsel, do  
16 you have any knowledge whatsoever of how  
17 that process is carried out and other  
18 offices within the department?

19           A. No.

20           Q. You previously testified that, to  
21 the best of your knowledge, one laptop  
22 belonging to Bill Crouch has been preserved  
23 when we were discussing devices that are  
24 issued to state employees; is that right?

1           A. I said it was a computer.

2           Q. Okay. A computer.

3           How many devices that were issued  
4 to state employees that were subject to this  
5 litigation hold have been wiped or otherwise  
6 destroyed?

7           A. I don't know.

8           Q. Are you aware of any devices that  
9 were issued to state employees that were  
10 subject to the 2019 litigation hold that  
11 were destroyed?

12          A. I don't know.

13          Q. You also stated that currently the  
14 state uses a chat messaging system through  
15 Google; is that right?

16          A. Yes.

17          Q. To the best of your knowledge, are  
18 those chat messages being preserved as it  
19 relates to individuals who are subject both  
20 to the 2019 litigation hold and to the more  
21 recent 2023 litigation hold produced by your  
22 office?

23          A. They should be right along with  
24 emails. When you open up your email

1 function, the chat function also opens up.

2 Q. Okay. Have you had -- I apologize.

3 A. It's just the executive branch

4 agencies who are in the Google domain now.

5 Not all state employees are using Google.

6 Q. Have you had any conversations with

7 the Office of Technology about preservation

8 of those Google chat messages?

9 A. No.

10 Q. Ms. Robertson, I think I just have

11 one more question for you. And it is really

12 just to clarify you and your office's

13 involvement with the preservation of

14 evidence in this case. I guess it's

15 actually broken up into a couple of

16 questions.

17 So it's your testimony here today

18 that the sole involvement that you or your

19 office has had with regard to preservation

20 of ESI in this case was issuing the 2019

21 litigation hold that we have been discussing

22 and the now 2023 litigation hold that was

23 recently distributed; is that correct?

24 A. And we have had some conversations

1 with OT over October and November just about  
2 process, our understanding versus their  
3 understanding --

4 Q. Okay.

5 A. -- as it relates to litigation  
6 holds in general.

7 Q. Okay. And now I believe it has  
8 also been your testimony that neither  
9 yourself nor to the best of your knowledge  
10 anyone within your office had any sort of  
11 follow-up conversations with the Office of  
12 Technology regarding this litigation hold  
13 between December of 2019 and September of  
14 2023; is that correct?

15 A. Our attorneys on our behalf have  
16 worked a lot with people at OT to -- as part  
17 of the discovery process.

18 Q. I am asking whether or not any --  
19 whether you yourself or anyone directly  
20 within your office has had any sort of  
21 follow-up communication within that time  
22 period?

23 A. No.

24 MR. MEADE: Okay. Let's take

1 one last quick break. And I promise we will  
2 try to get this wrapped up.

3 (Break in proceedings.)

4 BY MR. MEADE:

5 Q. Ms. Robertson -- so getting back  
6 into this -- you have just testified that at  
7 least to the best of your knowledge, no one  
8 from your office in particular, neither  
9 yourself or someone directly employed within  
10 your office, has or had a communication with  
11 the Office of Technology between December of  
12 2019 and September of this year; is that  
13 right?

14 A. Not to my knowledge.

15 Q. Okay. And it's also your testimony  
16 that you assumed when these litigation holds  
17 were emailed, that they were received,  
18 understood and implemented; is that correct?

19 A. Yes.

20 Q. When individuals have left the  
21 employment of the department, individuals  
22 specifically subject to the 2019 litigation  
23 hold, was anyone responsible for following  
24 up with the Office of Technology to ensure

1 that their electronic information would be  
2 preserved?

3 A. No. Because the language of the  
4 litigation hold is clear.

5 Q. So it's your position that nobody  
6 had that responsibility?

7 A. It's my position that that was not  
8 necessary. Because the language of the  
9 litigation hold is clear.

10 Q. Would you agree with me that given  
11 that large amounts of this electronically  
12 stored information were not preserved, that  
13 the letter itself may not have been  
14 sufficiently clear?

15 MS. BROWN: Objection. Calls  
16 for a legal conclusion.

17 A. I can't speak for the  
18 misunderstanding on OT's part.

19 Q. Do you have any sense of -- if  
20 there was someone who should have followed  
21 up with the Office of Technology upon the  
22 departure of staff subject to this hold, who  
23 would have had that responsibility?

24 MS. BROWN: Objection. Calls

1 for speculation.

2           A. The word "responsibility," I am not  
3 willing to place that on anyone because of  
4 everything I have previously stated. And I  
5 should say -- just so that we are clear  
6 about who you believe to be in my office  
7 when you say did anyone reach out or discuss  
8 with OT -- I have stated that I know outside  
9 counsel did. I don't know about anybody  
10 like Cammie for instance. But I believe  
11 that Shawn Charles -- who is in DHHR, but  
12 not necessarily in my office -- had multiple  
13 conversations throughout the pendency of  
14 this litigation with various individuals at  
15 OT at various times.

16           Q. Have you spoken with Mr. Charles  
17 about this yourself?

18           A. No, not -- when you say "this," can  
19 you be more specific?

20           Q. Have you spoken with Mr. Charles  
21 regarding communications he would have had  
22 with the Office of Technology following the  
23 distribution of the 2019 litigation hold?

24           A. No. But I have seen emails.

1                   Q. Okay. And again, just to be clear,  
2 it's your testimony here today that the 2019  
3 litigation hold that was distributed by your  
4 office was intended to apply to individuals  
5 other than those specifically named within  
6 that document; is that correct?

7                   A. Yes. There is a paragraph in there  
8 that says, to the named individuals, if you  
9 supervise or have any other people in your  
10 office who may have subject matter documents  
11 related to the subject matter of this case,  
12 then you need to inform them of the need to  
13 preserve.

14                  Q. So it's your position here today  
15 then that it was the responsibility of these  
16 individuals named within the document to  
17 inform the Office of Technology about anyone  
18 else under their supervision who should have  
19 been subject to this hold?

20                  A. That's not what I said. It was  
21 their responsibility to talk to the people  
22 that reported to them about their need to  
23 preserve.

24                  Q. So would anyone have been

1 responsible for informing the Office of  
2 Technology about individuals who are not  
3 named in this document?

4           A. We have been working on our process  
5 since this all came to light internally.  
6 And I know OT has been working on their  
7 process. We have been working together to  
8 have a better understanding of the steps  
9 necessary to ensure preservation. And  
10 moving forward, we will be having additional  
11 safeguards in place.

12           Q. So then is it your testimony that  
13 nobody was responsible for informing the  
14 Office of Technology about individuals who  
15 should be subject to this litigation hold  
16 but are not named within it?

17           A. It's my testimony that to my  
18 knowledge no one -- say perhaps Shawn  
19 Charles in some of his email communications  
20 with OT -- discussed the ongoing litigation  
21 hold that was in place.

22           Q. So then to the best of your  
23 knowledge, no one communicated to the Office  
24 of Technology to preserve electronically

1 stored information for anyone outside of the  
2 individuals who are specifically named in  
3 your 2019 litigation hold?

4 A. That is fair to say.

5 MR. MEADE: I don't believe I  
6 have any more questions. Thank you,  
7 Ms. Robertson. I appreciate you coming  
8 down.

9 MR. WALTERS: Hold on a second.  
10 She may have some questions.

11 MR. MEADE: I suppose that is  
12 true. I assumed no.

13 MS. BROWN: No. We have no  
14 questions. But we do reserve the right to  
15 read and sign.

16 MR. MEADE: I believe the only  
17 additional thing here is, we would like to  
18 reserve the right to re-depose this witness  
19 following the potential deposition of a  
20 member of the Office of Technology.

21 (Deposition concluded at 10:45 a.m.)

22 \* \* \* \* \*

23

24

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**1 CERTIFICATE**

2

3 I, Tara Arthur, Certified Stenotype  
4 Reporter and Notary Public, do hereby  
5 certify that the foregoing deposition of the  
6 above-named witness, was duly taken by me in  
7 machine shorthand, and that the same were  
8 accurately written out in full and reduced  
9 to computer transcription.

10 I further certify that I am neither  
11 attorney or counsel for, nor related to or  
12 employed by any of the parties to the action  
13 in which this deposition is taken; and  
14 furthermore, that I am not a relative or  
15 employee of any attorney or counsel employed  
16 by the parties hereto or financially  
17 interested in the action.

18 My commission expires April 16, 2027.

19

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**Tara Arthur**  
Certified Court Reporter/Notary Public

22

23

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